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The Value of Child Support

by Roland Fancher, Daniel Bauer, and Timothy Cole

“Child support” is money paid by one person to another to provide for the needs of a child being cared for by the support recipient. The most important benefit of child support is that it helps to pay for food, clothing, and other items the child needs. However, there are many other benefits. Two other important benefits of child support establishment, collection, and enforcement are cost recovery and cost avoidance.

Savings to the Tax Payer

As stated above, child support helps families pay for food, clothing, and other necessary items required to raise a child. When child support is not collected, some families may need assistance from the state to obtain these necessary products. People generally refer to this as “public assistance” or, more specifically, payments under the “Family Investment Program (FIP).” When a family begins receiving FIP benefits, the state retains any child support collected to recover all or a portion of the costs of the FIP benefits given to the family. This benefit of the child support program is referred to as “cost recovery.”

Cost recovery saves taxpayer money. In Michigan, approximately 48 percent of collections from Michigan’s Child Support Program are retained by the state to recover money previously paid out for public assistance benefits. These collections are then used to fund FIP benefits to other families.

Cost avoidance occurs when child support collected results in less money being spent on public assistance programs like FIP. Savings occur when child support sent directly to the support recipient provides enough money so the family does not need public assistance to pay for food, clothing, or other necessary items required to raise a child. This renders a household otherwise eligible for public assistance ineligible. Cost avoidance is difficult to compute because we cannot keep track of people who do not apply for public assistance. The following examples of child support cost avoidance have been estimated by the United States Department of Human Services from nationwide data collected in 1999:

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Some Exemplary Family Court Programs and Practices

by State Court Administrative Office, Friend of the Court Bureau Staff

In May of 2005, the Association of Family and Conciliation Courts (AFCC) released its report, "Exemplary Family Court Programs and Practices." The AFCC's report profiles 69 programs that have demonstrated creativity, innovation, effectiveness, and accountability. Here are brief descriptions of some of the children services programs that were selected for recognition:

The Children of Divorce Intervention Program (CODIP) is administered by the Children's Institute University of Rochester, Rochester, New York. The program is designed specifically to help children of different ages cope with the emotional and behavioral challenges associated with divorce. The program teaches coping and resiliency skills to children to enhance their capacity to deal with their parents' divorces.

The Lawyers For Children, Inc. (LFC) of New York provides free legal advocacy and social work services to children voluntarily placed in foster care and to children who are the subjects of family court proceedings related to abuse, neglect, termination of parental rights, custody, visitation, or guardianship. For each case assigned to LFC, a social worker and a lawyer work together to find a resolution that addresses the best interests of the child.

The Children's Law Center, Inc. of Covington, Kentucky provides legal representation to approximately 50-80 children per year involved in custody and visitation cases. In addition to custody and visitation cases, local attorneys have provided pro bono representation to indigent or needy children involved in guardianship, adoption, and parentage proceedings, as well as child witness representation. The majority of these cases involve issues of sexual and physical abuse, dependency, and neglect. Law students have been retained to assist with individual cases and in preparing training materials.

The Children's Law Center of Washington DC-Pro Bono GAL(Guardian Ad Litem) Project conducts two training sessions per year and mentors pro bono attorneys. Every attorney who attends the training commits to taking at least two cases that year. When CLC receives a case referral from a Superior Court judge, the coordinator sends an e-mail to a list of eligible trained attorney seeking volunteers to serve as guardians ad litem.

The Kid's Voice of Olathe, Kansas offers children an opportunity to express their feelings about the changes in their lives. The children are placed in age-based groups of ten with two trained facilitators. At the same time, parents are being taught co-parenting and communication skills to use with their children as well as with the other parent.

Family Law CASA of King County, Washington recruits, screens, trains, supervises, and supports the community volunteers who are appointed to investigate custody and visitation disputes in order to give children a voice in court. The program assists low and moderate-income families who are involved in contested disputes over family dissolution, paternity, and custody and visitation modifications.

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State Court Administrative Office, Friend of the Court Bureau, Launches Customer Service Unit

by State Court Administrative Office, Friend of the Court Bureau Staff

Recently, the State Court Administrative Office, Friend of the Court Bureau, established the Friend of the Court Customer Service Unit. The Customer Service Unit employs law students as customer service clerks to assist friends of the court and to answer phone calls, letters, e-mails, and other questions regarding friend of the court operations. **As with all State Court Administrative Office employees, the customer service clerks do not provide legal advice nor do they address case specific questions from friend of the court customers.** They do, however, provide general information about:

- Friend of the court operations.
- The location of court forms on the Michigan Supreme Court website.
- Phone numbers and addresses for local friend of the court offices.
- The location of State Court Administrative Office publications.

The customer service clerks will assist in the grievance review process and establish a database to allow the Friend of the Court Bureau to better identify grievance trends. Soon the clerks will be researching and writing: 1) articles for the Pundit; 2) State Court Administrative Office publications; and 3) reports.

While the Customer Service Unit will assist friends of the court and customers, it does not replace the role of the friend of the court or the interactive voice response (IVR) systems within each local friend of the court office. Customers will still need to contact their local friend of the court offices or the Michigan Office of Child Support at 1-866-540-0008 for information pertaining to their cases; each local friend of the court will continue to provide information regarding its policies, procedures, and practices; and customers will still use the IVR to speak to a representative of the Michigan Disbursement Unit regarding payment information.

Friend of the court customers may also want to visit the State Court Administrative Office's website at: <http://courts.michigan.gov/scao/services/focb/focb.htm> for information about custody, parenting time, and child support.

"... customer service clerks ... assist friends of the court and ... answer phone calls, letters, e-mails, and other questions ..."

Cases in Brief

by State Court Administrative Office, Friend of the Court Bureau Staff

***Gehrke v Gehrke*, ___ Mich App ___ (5/10/05); COA Docket No. 253506 [now on appeal to Michigan Supreme Court; S Ct Docket No. 128922]**

The parties' consent divorce judgment gave them joint physical custody and equal parenting time. Their child thus lived half of the time with each parent. The parties agreed that the defendant father should pay child support even though the child would be living with him half the time. Later, when the defendant suffered a reduction in his income, he asked the court to reduce his child support obligation to reflect both that income reduction and the fact that the child lived with him half of the time. The trial court granted some relief because of the changed circumstances, but ruled that it could not grant any relief based on the half-time residence arrangement.

ISSUE #1: When the trial court did not to apply the shared economic responsibility formula (SERF) in the initial custody/parenting-time judgment (or any subsequent order modifying the custody/parenting-time arrangement), may a parent who always has had joint/equal physical custody rely on SERF as a ground for changing the child support obligation?

HELD: No. If SERF is to be applied, that must be done in an order that establishes or modifies the custody/parenting-time arrangement. See the Michigan Child Support Formula (MCSF) Guidelines Manual §IV(B), page 26. If the basic custody arrangement is not changed, the support payer may not invoke SERF solely to obtain a support reduction. That is because the decision not to apply the presumptively applicable SERF in the existing custody/parenting-time order reflected a balancing of other factors that benefited the support-paying parent in some way not related to SERF. [Note: This decision distinguishes *Burba v Burma*, 461 Mich 637 (2000).]

ISSUE #2: May a support-paying parent who always has had joint/equal physical custody seek a retroactive parenting time abatement of his support obligation?

HELD: No. The parenting time abatement is available only to *non*-custodial parents, not to a parent who shares physical custody equally. MCSF Guidelines Manual §IV(C), page 27.

***Mason v Simmons*, ___ Mich App ___ (6/28/05); COA Docket No. 257692 [no Supreme Court appeal files as of 7/27/05]**

The Child Custody Act of 1970 establishes a presumption that changing a child's "established custodial environment" is contrary to that child's "best interests." That presumption can be overcome only by "clear and convincing evidence" to the contrary. MCL 722.27(1)(c). Meanwhile, however, if the custody contest is between a natural parent and any non-parent, the Act also creates a similarly difficult-to-rebut presumption favoring the parent. MCL 722.25(1).

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"If the basic custody arrangement is not changed, the support payer may not invoke SERF solely to obtain a support reduction."

Capitol Corner

by State Court Administrative Office, Friend of the Court Bureau Staff

Since the last edition of the Pundit was published, the following bills have been introduced in the Michigan Senate. These bills and others can be viewed at: <http://www.legislature.mi.gov/>

Senate Bill 386 would amend MCL 710.60 in the Probate Code. The bill would permit a grandparent whose grandchild is being adopted to file a motion for grandparenting time. The bill was introduced on April 14, 2005, and referred to Committee on Senior Citizens and Veterans Affairs.

Senate Bill 420 would amend MCL 722.727b in the Child Custody Act. The bill would permit a grandparent whose own child is deceased to file a motion for grandparenting time with the child of the deceased child. The bill was introduced on April 26, 2005, and referred to the Committee on Senior Citizens and Veterans Affairs.

Senate Bill 436 would amend MCL 722.711, 722.714, 722.716, 722.717, and 722.720 in the Child Custody Act. The bill would revise the definition of “child born out of wedlock.” The bill would allow a man who claims to be the father of a child born to some other man’s wife after May 1, 2005, to bring an action to prove paternity in the circuit court if certain conditions are present. The bill was introduced on April 27, 2005, and referred to the Committee on Families and Human Services.

Senate Bill 535 would amend MCL 722.723 in the Child Custody Act. The bill would require the court to consider during a custody or parenting time dispute any evidence that one or both of the parties used or abused a controlled substance. The bill was introduced on May 25, 2005, and referred to Committee on Families and Human Services.

Senate Bill 602 would amend MCL 552.451 in the Family Support Act. The bill provides that if the court finds that a nonresident parent is avoiding personal service, then service may be made by:

- Publishing a copy of the court order in a newspaper in the county where the defendant resides.
- Posting a copy of the court order in the court house and two other public places.
- Any other method of service reasonably calculated to give the defendant actual notice of the proceedings.

The bill was introduced on June 16, 2005, and referred to the Committee on Families and Human Services.

Cases in Brief, continued from page 4

So, what presumption controls when the non-parent's home is the established custodial environment and a parent seeks custody? In *Heltzel v Heltzel*, 248 Mich App 1 (2001), the Court of Appeals ruled that the parental presumption trumps the established-environment presumption because a fit parent has a constitutional right to custody of a child. See the U.S. Supreme Court's decision in *Troxel v Granville*, 530 US 57; 120 S Ct 2054; 147 L Ed 2d 49 (2000).

ISSUE: But what if the court determines that the parent is not a "fit" parent? In this latest case, the defendant fathered a daughter but had almost no contact with the child or her mother for the next five years. Then the child's mother died and the child's adult maternal half-sister was appointed the child's legal guardian. The defendant still made no effort to contact his daughter for the next three years. That changed only when the Department of Human Services filed a paternity action to formally identify the defendant as the father and require him to pay child support. The defendant then petitioned the court to award custody to him. He relied on the parental presumption rule in MCL 722.25(1) and the *Heltzel* precedent. The half-sister opposed his motion, relying on the established-environment presumption in MCL 722.27(1)(c) and arguing that the defendant was not a "fit" parent and, therefore, was not entitled to the parental presumption. The trial court mostly agreed with the half-sister, ruling that, in these circumstances, the defendant could prevail only if he showed by "a preponderance of the evidence" that a change of custody would be in the child's best interests. The trial judge found that the defendant had not made that showing.

HELD: The Court of Appeals affirmed the decision to keep custody with the half-sister. The Court ruled that only "fit" parents have the constitutional right to custody recognized in *Troxel* and may rely on the *Heltzel* ruling that the parental presumption trumps the established-environment presumption. The Court affirmed the trial judge's finding that the defendant had not demonstrated his fitness; therefore, it also affirmed the decision to allow the half-sister to retain custody.

DeLamiellure v Belote, ___ Mich App ___ (7/12/05); COA Docket No. 254593 [no Supreme Court appeal filed as of 7/27/05]

The parties' divorce judgment awarded physical custody of their child to the defendant mother. The judgment also included a statement that, should she decide to move with their child to another state, the plaintiff waived his right to insist that the defendant satisfy the change-of-domicile criteria in MCL 722.31, part of the Child Custody Act of 1970. Later, the defendant remarried and declared her intent to move to Arkansas with her new husband and the parties' child. The plaintiff objected, relying on MCL 722.31 and contending that the defendant had not satisfied the criteria for changing the child's domicile to another state. [See also MCR 3.211(C), which did not figure directly in the Court's decision of this case.] The trial court upheld the plaintiff's objection, struck the waiver clause from the original judgment, and ruled that the defendant's reasons for moving did not satisfy the statutory criteria.

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FYI

by State Court Administrative Office, Friend of the Court Bureau Staff

Action Transmittals

Since the last publication of the Pundit, the Michigan Office of Child Support has released the following action transmittals (ATs):

AT 2005-042 (released July 12, 2005): This AT introduces the Amnesty Program and describes Michigan Office of Child Support and the friend of the court responsibilities.

AT 2005-039 (released June 20, 2005): This AT replaces AT 2005-013. The AT provides clarifications regarding the tax offset program as introduced with the Michigan Child Support Enforcement System (MiCSES) 3.4 release.

AT 2005-038 (released June 20, 2005): This AT provides guidelines and procedures for entering incarceration information and viewing incarceration status on MiCSES, to comply with Michigan Court Rule (MCR) 2.004, and for entering county jail inmate information for potential review of support.

AT 2005-037 (released June 20, 2005): This AT summarizes the statutory changes to the review and modification process for child support orders and the updates to the functionality in the Michigan Child Support Enforcement System (MiCSES).

AT 2005-036 (released June 20, 2005): This AT summarizes how MiCSES handles the third phase of the required changes for the surcharge legislation.

AT 2005-034 (released June 9, 2005): This AT addresses withholding support from obligor's Social Security Administration (SSA) benefits.

AT 2005-30 (released June 6, 2005): This AT provides general information on good cause and how this information is recorded in MiCSES. It includes information on a data conversion problem with the good cause date and optional clean-up procedures.

Amnesty Program

The Amnesty Program is to begin October 1, 2005. The Amnesty Program waives enforcement penalties for failure or refusal to pay support for participating payers from October 1, 2005, through December 31, 2005. The Amnesty Program only applies to support arrearages accrued before the payer applies for the Amnesty Program.

Joint Policy on Arrearage Repayment Plans

The State Court Administrative Office and the Michigan Office of Child Support recently released a joint policy regarding arrearage repayment plans. The joint policy can be found at: <http://mi-support.cses.state.mi.us/policy/stateat/pdf/2005/2005-012.pdf>

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The Value of Child Support, continued from page 1

- \$936 Million saved on Food Stamps.
- \$735 Million saved on TANF (Temporary Assistance Needy Families).
- \$588 Million saved on Medicaid.

Cost avoidance demonstrates the importance of child support being established, collected, and enforced. It allows families to free themselves from relying on public assistance.

Michigan's Economy

Money brought into a community is spent about 2.2 times (as it cycles and recycles) within the community; this is referred to as the “multiplier effect.” Every child support dollar collected will be spent at local merchants and businesses, who then invest it in the local community. These dollars create jobs, thus strengthening the economy. The Michigan Child Support Program collected \$1.4 billion in child support in 2004. This resulted in about \$3 billion invested in Michigan's local communities.

Child support also benefits the economy by paying child care. In Michigan, when one of the parents incurs work-related child care expenses, a child care support payment is required. Work-related child care expenses include those net expenses which allow the parent to look for employment, retain paid employment, or to enroll in and attend an educational program that will improve employment opportunities. A report released recently by the MIT Workplace Center and the Family Initiative of Legal Momentum, disclosed that, when children are enrolled in day care for a significant amount of time, their parents also benefit. The report pointed to data in a study of more than 100 children which found that, over a 21-year period, day-care children's mothers earned \$78,750 more than women whose children did not participate in day care.

Child care payments also create jobs. According to the National Child Care Association, the child care industry employs approximately 900,000 licensed providers and teachers nationwide. According to the MIT-Legal Momentum report, national revenues for direct child care were estimated at \$43 billion in 2002.

It is critical that child support is paid to provide for the needs of children, but there are other benefits from child support payments. It represents an important income source for many families and may be most critical for families no longer receiving public assistance or trying to avoid receiving public assistance. When families no longer receive public assistance, it benefits both the family and taxpayers. Child support benefits the economy as it is invested in local communities. Child support makes it more likely that child care can be provided. Quality child care provides an opportunity for parents to look for employment, retain paid employment, or obtain education. Without child support, many parents could not afford quality child care, and thus could not be employed and contribute to their local economies.

The United States Department of Human Services has published the “Child Support Cost Avoidance in 1999, ‘Final Report’, June of 2003. The report can be found at: http://www.acf.hhs.gov/programs/cse/pubs/2003/reports/cost_avoidance/.

Some Exemplary Family Court Programs and Practices, continued from page 2

The entire AFCC report is at: <http://www.afccnet.org/pdfs/Exemplary%20Practices.pdf>. The report also provides descriptions of additional programs that provide services for parenting plans, dispute resolution, parenting, support, specialty courts, and information technology.

Those interested in learning more about new and innovative programs that assist families, and about possible sources of funding for programs, should review the report.

Cases in Brief, continued from page 6

ISSUE: Should the courts enforce a judgment provision in which the non-custodial parent purports to waive his statutory right to insist that the custodial parent satisfy the statutory criteria for changing the child's domicile?

HELD: No. In a hypothetical case, it might be proper for the parties to stipulate in advance to a specific change of domicile that they anticipate at the time of divorce. But the courts will not countenance a "blanket waiver" like the one in this case's judgment.

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Access and Visitation Grant Funding

The State Court Administrative Office is pleased to announce that it expects to receive Access and Visitation Grant funding for the fiscal year October 1, 2005, through September 30, 2006. As part of this award, the State Court Administrative Office is making grants available to courts to support and facilitate non-custodial parents' access to and visitation with their children. Only applicants from circuit courts will be considered.

Grant applications are available at:

<http://courts.michigan.gov/scao/services/grants/2006AccessAndVisitationGrant.pdf>.

Margot Bean Appointed Head of Office of Child Support Enforcement

Department of Health Human Services Assistant Secretary for Children and Families Dr. Wade F. Horn, announced that Secretary Mike Leavitt has appointed Margot Bean as the head of the Office of Child Support Enforcement (OCSE). Ms. Bean, was previously in charge of the child support enforcement division of the New York state Office of Temporary and Disability Assistance. Ms. Bean began service in the Bush Administration on July 25, 2005. For more information about Ms. Bean, see the following article at:

http://www.acf.hhs.gov/news/press/2005/Bean_appointment.htm.